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IN THE

Supreme Court of the United States

October Term, 1951

No. 543

Office - Supreme Court, U. S.
FILED
APR 13 1952
CHARLES ELMORE CROPLEY
CLERK

ON LEE,

Petitioner,

v.

UNITED STATES OF AMERICA.

**MOTION FOR LEAVE TO FILE BRIEF AS
AMICI CURIAE**

Now come Joseph Steinberg and Donald Steinberg, by their attorney, Sanford H. Cohen, and respectfully move for leave to file a brief as *amici curiae* in the above entitled cause.

Gilbert S. Rosenthal, Esq., the attorney for the petitioner On Lee, has consented to permit the filing of a brief as *amici curiae* on behalf of Joseph Steinberg and Donald Steinberg, and expressly consents to the granting of this application. The Solicitor General has withheld consent, stating that it is his practice to do so in order to enable this Court to determine for itself the propriety of each application.

The basis of this application arises out of the fact that Joseph Steinberg and Donald Steinberg are defendants in separate criminal prosecutions for perjury alleged to have been committed in testimony before a Grand Jury. Their respective trials are now pending in the United States District Court for the Southern District of New York.

The United States Attorney, acting in pursuance of a subpoena issued under Rule 17(c) of the Federal Rules of Civil Practice and under an order issued out of the District Court, has stated that the necessary corroboration under one count against each of the defendants will be testimony of a Government Agent who will claim to have overheard a conversation conducted in the defendants' private office by means of a transmitting device concealed on the person of a visitor to that office.

The Steinbergs are attorneys, and the visitor who consulted the Steinbergs in their private office, with a transmitting device concealed on his person, was the client whose testimony will be sought to be corroborated by means of the transmitting device.

Accordingly, there are two separate bases for the instant application:

1. Because the question of law which will be presented on the trials against the Steinbergs is so identical with the question which may be determined by this Court in the *On Lee* case that, the decision in the *On Lee* case may be dispositive of the question which may arise on the separate trials against the Steinbergs. On March 24th, 1952, the District Court granted a continuance of the trials against the Steinbergs on the application of their counsel upon the ground of the identity of the question in the *On Lee* case with that which might be expected to be presented on the two trials against the Steinbergs.

2. Because the situation of the use of a concealed transmitting device, worn on the person of a client upon consultation with his attorneys in their private office, presents aspects of a special kind which are pertinent to the general policy which may be adopted in the *On Lee* case, but which may be overlooked unless called to the attention of this Court directly and specifically. It is to be expected that this Court, upon formulating a general

rule with the facts of the *On Lee* case directly before it, will attempt to envisage many different kinds of situation to which the principle to be announced will be applicable. It is not impossible, however, that the special situation presented by the consultation of attorney and client in the attorney's private office may not receive the full consideration which it deserves unless directly presented in a brief.

WHEREFORE, Sanford H. Cohen respectfully requests leave to file a brief as *amici curiae*.

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and Donald Steinberg,
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